

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DORIS FORTE, *et al*,

Plaintiffs,

VS.

WAL MART STORES, INC.,

Defendant.

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CIVIL ACTION NO. C-07-155

MEMORANDUM OPINION AND ORDER GRANTING MOTION TO COMPEL

For the reasons stated on the record during the August 4, 2009, hearing, defendant Walmart's motions to compel and to modify response deadline (D.E. 140, 141-1, 141-2) are granted. While plaintiffs continue to maintain that they are not seeking actual damages, they have not withdrawn their DTPA claims and do not intend to withdraw those claims.¹ Plaintiffs cited to no authority which permits them to refuse to answer discovery questions related to potential damages available if they prevail on their DTPA claims. Damages and the calculation of damages are factors relevant to the District Judge's decision whether to certify all or part of plaintiffs' claims as a class action. FED. R. CIV. P. 23(a); *see also Bertulli v. Indep. Ass'n. of Continental Pilots*, 242 F.3d 290, 298 (5th Cir. 2001) (individualized determination of damages is a factor to be considered by the District Court when determining whether to certify class action).

The parties stated on the record that they could agree on deadlines for the requested discovery and for the filing of Walmart's response to the motion to certify a

¹ In fact, in bringing their DTPA claims, plaintiffs specifically cite to Tex. Bus. Com. Code § 17.50(h), which grants to plaintiffs a right to collect economic (actual) damages (Pl. 8th Am. Compl., D.E. 106. @ Para. 12)

class. The parties shall submit an agreed proposed order, and if unable to agree, shall contact the undersigned and another hearing will be scheduled.

ORDERED this 6th day of August, 2009.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE